

Montana Water Court
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MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANTS: Glenn H. Snoeyenbos; Janet Snoeyenbos

CASE 43B-0416-R-2021

43B 8936-00

OBJECTOR: Trout Unlimited

NOTICE OF INTENT TO APPEAR: 360 Holdings LLC; Arthur L Burns
Jr. & Catherine L. Burns Trust; Christopher J.
Jensen; Lydia A. Jensen; Martin C. Malone; James
R. Melin; Petrich Family Limited Partnership;
Gordon R. Rigler; Sitka Ranch LLC; South Fork LLC;
United States of America (USDA Forest Service)

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties

on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Trout Unlimited objected to Glenn H. Snoeyenbos and Janet Snoeyenbos claim 43B 8936-00. The United States of America (USDA Forest Service), Judith A. Loring, and jointly 360 Holdings LLC, Arthur L Burns Jr. & Catherine L. Burns Trust, Christopher J. Jensen, Lydia A. Jensen, Martin C. Malone, James R. Melin, Petrich Family Limited Partnership, Gordon R. Rigler, Sitka Ranch LLC and South Fork LLC, filed notices of intent to appear. This claim appeared in the Preliminary Decree with the following remark:

ACCORDING TO THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION MEMORANDUM DATED JUNE 2, 1987 IT APPEARS THAT THE LEGAL DESCRIPTION FOR THE POINT OF DIVERSION SHOULD BE CHANGED TO SWNESE SEC 08, TWP 09S, RGE 09E.

On December 20, 2021 Judith A. Loring filed an unconditional Withdrawal Of Notice Of Intent To Appear. On May 6, 2022 Craig Snoeyenbos (as power of attorney for his mother Janet Snoeyenbos, father Glenn Snoeyenbos (deceased)), Trout Unlimited, and the United States of America (USDA Forest Service) filed a Stipulation To Resolve Objections. On May 20, 2022 the Order Setting Filing Deadlines was issued. The deadlines set were for the notice of intent to appear parties who did not sign the Stipulation to file a withdrawal of their joint notice of intent to appear, and for the stipulating parties to file a copy of the pertinent portion of the District Court Decree referenced in their Stipulation. On June 3, 2022 Trout Unlimited filed Additional Evidence. Nothing was filed by the joint notice of intent to appear parties.

On June 27, 2022 the Court issued an Order Rejecting Stipulation In Part as to the requested change to the historical basis and priority date of the claim. This Order also placed the joint notices of intent to appear on the Hearing Track pursuant to Rule 16(a), W.R.Adj.R. Finally, this Order set a scheduling conference to set various scheduling order dates in preparation for hearing the joint notice of intent to appear. On July 18, 2022 Trout Unlimited filed an Unopposed Motion To Vacate Scheduling Conference And Unopposed Request To Set Settlement Filing Deadline stating that all of the parties were confident the remaining issues

could be resolved outside the hearing track and that the parties would like the opportunity to file an amended stipulation. That same day, the Court issued the Order granting the Motion.

On October 18, 2022, an Amended Stipulation was filed by Janet Snoeyenbos and Trout Unlimited; Evidence In Support Of Amended Stipulation was filed by Trout Unlimited; Exhibits were filed by Trout Unlimited, and United States' Statement In Response To Amended Stipulation was filed. On October 19, 2022 the joint notice of intent to appear parties filed a Conditional Withdrawal of Notice Of Intent To Appear. The specified condition is the Court's acceptance of the other parties' October 18, 2022 stipulation. The settlement documents are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

A priority date represents the relative seniority of a particular right to others on the claimed source or hydrologic system. If the exact date of appropriation is unknown, a date which preserves that relative priority is the best that can be done.

The date of an appropriation appearing in a water right decree is material only in its relation to the question of priority. (*St. Onge v. Blakely*, 76 Mont. 1, 245 P. 532.) There is, therefore, no valid objection to the fixing of an arbitrary date of appropriation, and, if an incorrect date is given, the error is harmless unless the objecting claimant can show that his right antedates the date fixed for another instead of being subsequent thereto, as appears from the decree. (*Geary v. Harper*, 92 Mont. 242, 12 P. 2d 276; *McDonald v. Lannen*, 19 Mont. 78, 47 P. 648.)

Vidal v. Kensler, 100 Mont. 592, 594 (1935).

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. The Preliminary Decree states that the point of diversion legal description is the NWNESE section 8, T9S, R8E, PARK. The legal description should be the SWNESE section 8, T9S, R8E, PARK. The point of diversion issue remark should be removed as addressed and resolved.
2. The Preliminary Decree states that the flow rate is 2.50 CFS. The flow rate should be 1.25 CFS.

The flow rate also includes the following clarification remark:

THE PARTIES' SEPTEMBER 23, 1989 STIPULATION SPECIFIES THAT THE COMBINED FLOW RATES OF CLAIMS 43B 8935-00 AND 43B 8936-00 SHALL NOT EXCEED 2.50 CFS AND THAT THE COMBINED VOLUMES OF THESE TWO CLAIMS SHALL NOT EXCEED 93.60 ACRE FEET PER YEAR.

The referenced Stipulation was signed by John R. Hill (then attorney for the United States of America (USDA Forest Service)), Glenn H. Snoeyenbos, Janet G. Snoeyenbos, Donald A. Nash (the Snoeyenbos' attorney), Robert E. Gresswell, and Ellen S. Gresswell. The Gresswells were predecessors of the Snoeyenboses and no longer have an ownership interest in this claim. As the Snoeyenboses and the United States of America (USDA Forest Service) were parties in the 1989 Stipulation, there is no issue with these same parties making a modification to the Stipulation remark today. This remark should be moved to the volume entry on the abstract and should be modified to state:

THE PARTIES' SEPTEMBER 23, 1989 STIPULATION SPECIFIES THAT THE COMBINED VOLUMES OF CLAIMS 43B 8935-00 AND 43B 8936-00 SHALL NOT EXCEED 93.60 ACRE FEET PER YEAR.

3. The Preliminary Decree states that the priority date is June 30, 1896 and the type of historical right is "decreed". Paragraphs G and H of the Amended Stipulation plus the Evidence and Exhibits filed by Trout Unlimited, detail the research done through various District Court and Montana Supreme Court decisions and the rationale for the stipulating parties' determination that the claimed right is not a June 30, 1896 decreed right, but instead, a use right appropriated after the December 29, 1969 entry of the Decree in Cause Number 12471 (Montana Sixth Judicial District in and for Park County), *Blankenship v. Hayes*. There was no issue raised about the existence and validity of this

claimed right by the ReExamination or by the objection. The issues were the correct priority date and type of historical right for this claimed right.

The rationale presented by the stipulating parties is sound. The priority date should be December 30, 1969 and the type of historical right should be "use".

4. The Amended Stipulation requests that Glenn H. Snoeyenbos, deceased, be removed as an owner of this claim. That is an ownership update which needs to be pursued with the Montana Department of Natural Resources and Conservation.

5. The following remark also appeared in the Preliminary Decree:

THE TIMELY FILED OBJECTION OF THE UNITED STATES OF AMERICA WAS AMENDED BY TO INCLUDE PLACE OF USE . BECAUSE THIS ELEMENT WAS NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THIS CHANGE MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

This remark provides notice of this change made during the Temporary Preliminary Decree proceedings and does not raise an unresolved issue which needs to be addressed. The remark should be removed as having served its notice purpose.

CONCLUSION OF LAW

The settlement filed is sufficient to contradict and overcome the prima facie claim and to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 8936-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: GLENN H SNOEYENBOS
42 HILLS RD
AMHERST, MA 01002
JANET SNOEYENBOS
42 HILLS RD
AMHERST, MA 01002

Priority Date: DECEMBER 29, 1969
Type of Historical Right: USE
Purpose (use): IRRIGATION
Irrigation Type: FLOOD
***Flow Rate:** 1.25 CFS
***Volume:** 93.60 AC-FT

THE PARTIES' SEPTEMBER 23, 1989 STIPULATION SPECIFIES THAT THE COMBINED VOLUMES OF CLAIMS 43B 8935-00 AND 43B 8936-00 SHALL NOT EXCEED 93.60 ACRE FEET PER YEAR.
THE WATER COURT HAS DETERMINED THAT A VOLUME QUANTIFICATION IS REQUIRED TO ADEQUATELY ADMINISTER THIS RIGHT

Climatic Area: 5 - LOW
***Maximum Acres:** 8.00
Source Name: BEAR CREEK
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNESE	8	9S	9E	PARK

Period of Diversion: MAY 1 TO SEPTEMBER 30
Diversion Means: HEADGATE
Ditch Name: BIGELOW-CHAPMAN DITCH
Period of Use: MAY 1 TO SEPTEMBER 30

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	7.00		S2SENE	23	9S	8E	PARK
2	1.00		NENESE	23	9S	8E	PARK
Total:	8.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

8935-00

8936-00